

EXHIBIT 1

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2023 APR 13 PM 3:31

L. JEAN NECKSTROTH
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF AUGLAIZE COUNTY, OHIO
CIVIL DIVISION

TOM TEPE AUTO CENTER, INC.,
Individually and as Assignee,
426 East Indian Trail
Milan, Indiana 47031

Plaintiff,

v.

CARVANA, LLC
300 E. Rio Salado Parkway
Tempe, AZ 85281

Serve Also:

CARVANA, LLC
c/o Corporation Service Company,
Statutory Agent
3366 Riverside Drive, Suite 103
Upper Arlington, Ohio 43221

and

T&T AUTO, LLC
316 South Park Drive
St. Marys, Ohio 45885

Defendants.

Case No. 2023 CV 0056

Judge _____

COMPLAINT

COMPLAINT

For its Complaint, Plaintiff, Tom Tepe Auto Center, Inc., individually and as assignee, against Defendants, Carvana, LLC and T&T Auto, LLC, states, alleges and claims as follows.

I. Nature of Action

1. Plaintiff, Tom Tepe Auto Center, Inc., ("Tom Tepe"), brings this action against Defendants, T&T Auto, LLC ("T&T") and Carvana, LLC ("Carvana"), alleging odometer fraud in violation of federal and state law as set forth herein.

II. Parties

2. Tom Tepe is an Indiana corporation with its principal place of business located at 426 East Indian Trail, Milan, Indiana 47031.

3. Carvana is an Arizona limited liability company with its principal place of business located at 300 E. Rio Salado Parkway, Tempe, Arizona 85281. Carvana owns and operates physical locations in Ohio, where the company has more locations than any other state.

4. T&T is an Ohio limited liability company with its principal place of business located at 316 South Park Drive, St. Mary's, Auglaize County, Ohio 45885.

III. Jurisdiction and Venue

5. This action arises under 49 U.S.C. 32701 *et seq.* (the "Federal Odometer Fraud Statute").

6. Pursuant to 49 U.S.C. §32710(b), "[a] person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction." *Id.*

7. This Court has subject matter jurisdiction over the matter and parties pursuant to its general jurisdiction powers.

8. Venue is proper with this Court pursuant to Rule 3 of the Ohio Rules of Civil Procedure as the county where Defendant, T&T, resides and has its principal place of business; and the county wherein the activity was conducted giving rise to the claims.

9. This Court has personal jurisdiction over Carvana as it transacted business with citizens of the State of Ohio, specifically T&T, and committed acts in connection with that transaction and uttered false and misleading statements and representations directed toward an Ohio citizen and business. This Court has personal jurisdiction over T&T as its principal place of business is in Ohio and it transacts business there including with respect to the underlying transaction.

IV. Factual Allegations Common to All Counts

10. On or about December 10, 2020, Carvana sold T&T (through Manheim Auto Auction) a 2016 Dodge Journey (the "Vehicle"), Vehicle Identification Number 3C4PDCAB7GT151628. A true and accurate copy of the Bill of Sale is attached hereto as **Exhibit A**.

11. The Bill of Sale and representations thereunder was specifically directed to T&T as an Ohio operated and located business.

12. As part of the Bill of Sale, Carvana affirmatively represented and certified in the federally mandated odometer disclosure that the Vehicle's mileage was listed as 16,881 miles.

13. On April 14, 2021, T&T sold the Vehicle to Tom Tepe. A true and accurate copy of the purchase agreement between T&T and Tom Tepe is attached as **Exhibit B**.

14. On the purchase agreement between T&T and Tom Tepe, the Vehicle's mileage was listed as 17,012 miles.

15. On June 12, 2021, Tom Tepe sold the Vehicle to Taylor House and Jason Winkleman as co-purchasers, and as part of that transaction, based on prior representation and disclosure by Carvana and T&T, Tom Tepe showed the actual mileage as 17,221. On July 19, 2022, the co-purchasers commenced a lawsuit against Tom Tepe alleging that the Vehicle's odometer was tampered and the actual mileage on the Vehicle was materially inaccurate.

16. On September 13, 2022, the co-purchasers gave an assignment of rights of their chose in action and causes of action to Tom Tepe. A true and accurate copy of the Assignment of Rights is attached hereto as Exhibit C.

17. As part of the lawsuit against Tom Tepe, it was learned that the Vehicle's true and accurate mileage was 123,085 miles, at or near the time of sale from Carvana to T&T.

18. Thus, Carvana and T&T made materially false statements in their respective federally mandated mileage disclosures.

V. Causes of Action

COUNT I: VIOLATION OF 49 U.S.C. §327 et seq.

19. Tom Tepe hereby incorporates by reference all prior allegations with the same force and effect as if fully set forth herein.

20. Pursuant to 49 U.S.C. §32705(a)(1)(A), a person transferring ownership of a motor vehicle shall give the transferee written disclosure of the cumulative mileage registered on the vehicle.

21. Pursuant to 49 U.S.C. §32705(a)(1)(B), if the transferor knows that the odometer reading is different from the number of miles the vehicle has actually traveled, the transferor shall give written disclosure that the actual mileage is unknown.

22. Carvana should have known that the odometer reading was incorrect. "If a transferor reasonably should have known that a vehicle's odometer reading was incorrect, although he did not know to a certainty the transferee would be defrauded, a court may infer that he understood the risk of such an occurrence.... The Senate Report suggests that auto dealers should adopt business practices reasonably calculated to uncover incorrect odometer readings." *Nieto v. Pence*, 578 F.2d 640, 642 (5th Cir.1978).

23. Pursuant to 49 U.S.C. §32705(a)(2), a person transferring ownership of a motor vehicle may not give a false statement in making the mileage disclosure.

24. Carvana gave T&T a false statement in making Carvana's mileage disclosure. See **Exhibit A**.

25. T&T also gave a false statement in making its mileage disclosure to Tom Tepe.

26. Carvana's and T&T's false disclosure statements constitute recklessness and rise to the level of intent to defraud. "Mere reliance on the odometer reading, in the face of other readily ascertainable information from the title and the condition ... constitutes a reckless disregard that rises to the level of intent to defraud, as a matter of law. To make affirmative claims about mileage without knowledge is either intentionally deceitful or reckless, and therefore in violation [of the Federal Odometer Act]." *Aldridge v. Billips*, 656 F.Supp. 975, 978-979 (W.D.Va.1987).

27. While Carvana was in privity with T&T, and not Tom Tepe, individually or its assignee, the Federal Odometer Statute does not require privity. "Privity is unnecessary between the defrauded party and the party that violated the [Odometer] Disclosure Act with an intent to defraud." *Shaghoian v. Aghajani*, 228 F.Supp.2d 1107, 1112 (C.D. Cal. 2002)(citing *Tusa v. Omaha Auto. Auction, Inc.*, 712 F.2d 1248, 1253-54 n.2 (8th Cir.1983)); see also *Alley*

v. *Chrysler Credit Corp.*, 767 F.2d 138, 142 (5th Cir.1985); *Ryan v. E.W. Edwards, Jr.*, 592 F.2d 756, 761 (4th Cir.1979).

28. As such, by virtue of its assignment (see Exhibit C), Tom Tepe may pursue Carvana and/or T&T for their violations of the Federal Odometer Statute regarding the Vehicle.

29. Pursuant to 49 U.S.C. §32710(a), a person that violates the Federal Odometer Statute, or a regulation prescribed, or order issued under the chapter, with intent to defraud, is liable for 3 times the actual damages or \$10,000, whichever is greater.

30. Carvana's and T&T's actions constitute a violation of the Federal Odometer Fraud Statute. Accordingly, Carvana and T&T, jointly and severally, are liable for three times the actual damages suffered by Tom Tepe, as assignee, in an amount in excess of \$25,000.00, the exact amount to be proven at trial.

COUNT II: BREACH OF CONTRACT (AS AGAINST T&T)

31. Tom Tepe hereby incorporates by reference all prior allegations with the same force and effect as if fully set forth herein.

32. On April 14, 2021, T&T and Tom Tepe entered into an enforceable contract regarding the sale and purchase of the Vehicle. See Exhibit B.

33. In its contract with Tom Tepe, T&T expressly and affirmatively represented to Tom Tepe that the Vehicle had 17,221 actual miles.

34. T&T breached its contract with Tom Tepe and Tom Tepe suffered damages as a result of the breach.

35. T&T breached the contract because, as learned by Tom Tepe after purchasing the Vehicle, the mileage represented in writing by T&T was inaccurate.

36. Therefore, due to T&T's failure to deliver the Vehicle which it represented to Tom Tepe pursuant to the contract, T&T breached the contract.

37. Tom Tepe seeks an award of its damages caused by T&T's breach in an amount in excess of \$25,000.00, the exact amount to be proven at trial.

VI. Requested Relief

WHEREFORE, Tom Tepe Auto Center, Inc. demands judgment against the Defendants as follows:

- A. For violations of the Federal Odometer Act against Defendants Carvana, LLC and T&T Auto, LLC, compensatory damages in an amount in excess of \$25,000.00, jointly and severally, the exact amount to be proven at trial, plus interest at the statutory rate;
- B. For breach of contract against Defendant T&T Auto, LLC, compensatory damages in an amount in excess of \$25,000.00, the exact amount to be proven at trial, plus interest at the statutory rate;
- C. For all counts, pre-judgment and post-judgment interest in the amount established by law;
- D. For all counts, an award of reasonable attorneys' fees in an amount to be demonstrated at a proper hearing;
- E. For all counts, an award of court costs and other costs as permitted by law;
- F. For all counts, any other relief in law or equity that this Court may deem just and proper.

Respectfully submitted,



John H. Stachler (#0064130)

Matthew T. Tipton (#0088307)

Adam M. Pitchel (#0097982)

STACHLERHARMON

7810 McEwen Road, Suite B

Dayton, OH 45459

Phone: 937.461.5901

Fax: 937.461.5981

john@stachlerharmon.com

matt@stachlerharmon.com

adam@stachlerharmon.com

Counsel for Plaintiff, Tom Tepe Auto Center, Inc.



BILL OF SALE

THIS IS NOT AN INVOICE

DOCUMENT NOT VALID
FOR EXPORT

638 myCentralAuction 7000 CENTRAL PKWY STE 600 ATLANTA, GA 30328 US Sale Date 10-DEC-2020 16:17:58 Yr Wk Ln Rn 2020-03-04-2086 Sale Type ONE		Sale Price \$ 8,600.00 Adjustments \$ 0.00 Final Sale Price \$ 8,600.00		Vehicle Purchase Price \$ 8,600.00	
Vehicle Information 2016 Dodge Journey SUV NONE White 3CAPDCA8TGT161626 Mileage: 16531 Miles 0 License Plate No: Title Information State: AZ Number: 1		Seller CARMAX, LLC 10616 ROCKET BLVD ONTARIO, FL 32834 US Seller Rep: Sheridan, D. B.		Buyer T & T AUTO LLC 157 S PARK DR Salt Lake, OH 45845 US Buyer Rep: CAROL PRESTON Sheridan, D. B.	
Vehicle Features 4 Cylinder Engine AT BEI		Auction Lights RED Vehicle sold as-is			
Odometer Disclosure Federal law (and state law, if applicable) requires the Seller to state the mileage upon transfer of ownership. Failure to complete or providing false information may result in fines and/or imprisonment. Seller hereby states that the odometer for this Vehicle now reads accurately to the mileage stated on this Bill of Sale under Vehicle Information and certifies to the best of Seller's knowledge that this reflects the actual mileage of this Vehicle, without disclosed omissions in the Announcements & Notes below.					
Announcements & Notes ASIS					

Seller agrees to sell the vehicle covered by this Bill of Sale to Buyer for the price noted therein.
 Seller is the transferor of the vehicle and is responsible for all disclosures, including odometer and mileage.
 Buyer must return a signed copy of this Bill of Sale and back, including the Odometer statement therein, to Seller or be subject to civil and criminal penalties. See 49 CFR § 560.310.
 Manheim makes a purchase money security interest in the Vehicle and its title and good funds are received from the Buyer.
 Seller and Buyer agree to the Manheim Terms and Conditions in effect at the time of the sale.
 Bill of Sale is not an invoice. Please refer to invoices in your account on Manheim.com.

Printed on: 05-Dec-2022 04:46:30





AUTO AUCTION

 4700 Groveport Rd
 Columbus, OH 43227
 PHONE: 614-437-2000

www.caa.com

231-4545

BUYER COPY

 Plate No: 1
 2
 3


08743

VEHICLE INFORMATION

COCKPIT: SEATBELT: STEERING:

Federal tax and State law demand that you carry out delivery in compliance with the transfer of ownership. Failure to comply or providing a false statement may result in field action being taken.

VEHICLE (VIN/MAKE/MODEL) 30400000000000000000

TEST AUTO LLC

3165 PARK DRIVE

ST MARTIN, OH 44088

Li:

STATE THAT THE COCKPIT OF THE VEHICLE DESCRIBED TO THE RIGHT NOW READS: 17012

TO THE BEST OF MY KNOWLEDGE, THIS IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED TO THE RIGHT AND ABOVE, UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

☐ I, HEREBY, CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE VEHICLE'S MILEAGE IS CORRECT AND ACCURATE.

☐ I, HEREBY, CERTIFY THAT THE COCKPIT MILEAGE IS NOT THE ACTUAL MILEAGE. **WARNING: COCKPIT DISCREPANCY.**

SELLER APPROVED SIGNATURE **PRINTED NAME OF SELLER**

PURCHASER (TRANSFER) C00006 Bld # 0342

CAR COUNTRY

PO BOX 428

MILAN, IN 47031

Li: 1D022573

FORPCHASER APPROVED SIGNATURE **PRINTED NAME OF PURCHASER**

BARNIE BRYANT

Title Receipt By:

DATE 4/14/2021	TIME 12:38	BLACK CLERK TURNER	STOCK NUMBER 8067584	CHIT 40128
VIN 30400000000000000000		WTT #		
YEAR 2016	MAKE DODGE	MODEL JOURNEY SE	DOOR 4D	COLOR WHIT
SEVEN XX	TOYOTA	PA	X7A	EPAN BPP CLVY

ANNOUNCED CONDITIONS

Title # 0800000000	State OH
Sale Price \$ 13,708.00	Buyer's Fee \$ 370.00
On Lot Fee \$	Off Lot Fee \$
Other \$	Total \$ 14,078.00

Buyer's Check # **Clerk's Sign**

Buyer and Seller agree that the vehicle described herein is bought and sold for the price reflected herein subject to the Auction Terms and Conditions in effect on the sale date and posted at the auction, and such Auction Terms and Conditions are incorporated herein by reference. PLEASE REVIEW THE AUCTION TERMS AND CONDITIONS CAREFULLY FOR IMPORTANT INFORMATION ON ARBITRATION GUIDELINES FOR THIS VEHICLE, INCLUDING ARBITRATION PERIOD AND ELIGIBLE CLAIMS. Seller is the transferor of the vehicle and is responsible for all disclosures, including odometer and mileage. This Bill of Sale is not an invoice. For all amounts due, please refer to invoices on your account. Payment terms are as set forth in the Auction Terms and Conditions in effect of the sale date. All sales, use, and other taxes and fees imposed upon or in connection with the sale, purchase, licensing, titling and/or registration of the vehicle(s) shall be the responsibility of the Buyer. When appropriate, Seller or authorized representative will bill Buyer for such taxes and Buyer agrees to pay such taxes to Seller at time of purchase. Seller or authorized representative will remit such taxes to the appropriate jurisdiction in accordance with applicable guidelines.

Title to the vehicle will not pass to Buyer until all amounts owing are received in good funds. Buyer hereby grants to Auction Company a security interest (including a purchase money security interest, where applicable) in the vehicle, which shall continue until all funds are collected with respect to such sale. Attention Dealer: As a party to this sale contract/bill of sale, you are representing that your dealership is properly licensed to engage in transactions for this type of vehicle in the applicable state at the time of purchase.

*** EXPORT ***

This is a 'routed export transaction' per 19 CFR 30.3, and by agreement Buyer is responsible for all export filing and licensing requirements.

ECON: EAR99 Country of Origin: US HTSUS: 8703.90.0000 Tax ID: 84-2765878



ASSIGNMENT OF RIGHTS

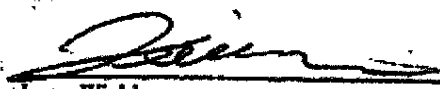
Taylor House and Jason Winkelman (collectively "Assignors") hereby assign to Tom Tepe Auto Center, Inc. ("Tom Tepe") all rights, claims, causes of action, and suits owned by them under State, Federal, or Common law, against any person who may have been a prior owner or transferor of a certain 2016 Dodge Journey purchased by Assignors from Tom Tepe on or about June 12, 2022 (the "Dodge").

In consideration for this assignment, Tom Tepe is repurchasing the Dodge from Assignors for the total amount of Thirteen Thousand Seven Hundred Dollars (\$13,700.00), with Assignors to re-assign Tom Tepe the title to the Dodge, and Tom Tepe agrees to pay any outstanding indebtedness owed by Assignors on the Dodge, as evidenced by a lien recorded on the Dodge's title certificate.


It is understood and agreed that Tom Tepe intends to investigate and pursue allegations of odometer fraud against prior owners of the Dodge and that if, and in the event, Tom Tepe makes a recovery against any such prior owner, it shall have sole right, title, and ownership in any proceeds thereby acquired. It is the intent of the parties in entering into this assignment to vest Tom Tepe with the right to proceed with any and all such claims.


IN WITNESS WHEREOF, we have hereunto set our hands and seals this 13 day of September, 2022.


Taylor House


Jason Winkelman

EXHIBIT**C**

Postmaster Use Only (Form 3811) Barcode		COMPLETE THIS SECTION ON DELIVERY	
 9570 9266 9904 2197 4997 40		A. Signature X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
		B. Received by (Printed Name) <input type="checkbox"/> C. Date of Delivery RECEIVED Corporation Service Company D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: APR 17 2023 FILED BY Amy E. Kuhlman, 7 2023 Agent	
1. Article Addressed to: CARVANA, LLC C/O CORP. SERVICE COMPANY, 97 3366 RIVERSIDE DRIVE, STE 103 COLUMBUS, OH 43221 2023 CV 0056		3. Service of Process <input checked="" type="checkbox"/> Certified Mail Reference Information 9 414 7266 9904 2197 4997 47 CLERK OF COURTS	
2. Certified Mail (Form 3800) Article Number 9414 7266 9904 2197 4997 47			
PS Form 3811, Facsimile, July 2015		Domestic Return Receipt	

Return Receipt (Form 3811) Barcode		COMPLETE THIS SECTION ONLY	
 9590 9266 9904 2197 4997 64		A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Mandy S. Lichte</i>	
		B. Received by (Printed Name) C. Date of Delivery Mandy S. Lichte 4-7-23	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	
1. Article Addressed to: T & T AUTO, LLC 316 SOUTH PARK DRIVE ST MARYS, OH 45885 2023 CV 0056		2. Service Type: <input checked="" type="checkbox"/> Certified Mail	
2. Certified Mail (Form 3800) Article Number 9414 7266 9904 2197 4997 61		Reference Information 9 414 7266 9904 2197 4997 61 CLERK OF COURTS	

PS Form 3811, Facsimile, July 2015 Domestic Return Receipt

05/03/2023 22:19

(FAX)

P.002/003

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2023 MAY -4 PM 3:25

J. JEAN HECKSTROTH
CLERK OF COURTSIN THE COURT OF COMMON PLEAS OF AUGLAIZE COUNTY, OHIO
CIVIL DIVISIONTOM TEPE AUTO CENTER,
INC., Individually and as Assignee,

Plaintiff,

v.

CARVANA, LLC, *et al.*

Defendants.

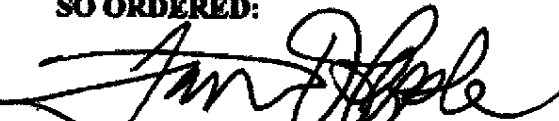
Case No. 2023 CV 0056

Judge Frederick D. Pepple

AGREED ENTRY OF EXTENSION OF
TIME

Upon agreement of the parties, Defendant T&T AUTO, LLC, is hereby granted a 30-day extension of time, up to and including June 14, 2023, in which to answer, move or otherwise respond to the Complaint filed by Plaintiff TOM TEPE AUTO CENTER, INC. No prior extensions of time have been requested or granted.

SO ORDERED:


 JUDGE FREDERICK D. PEPPLER